

Town of Mashpee

16 Great Neck Road North, Mashpee, MA 02649
ph: (508) 539-1400

Planning Board Minutes 04-17-2013

**Mashpee Planning Board
Minutes of Meeting
April 17, 2013 at 7:00 p.m.**

Waquoit Meeting Room, Mashpee Town Hall
Approved 5/1/13

Planning Board Members Present: Chairman Mary Waygan, George Petersen, David Kooharian, Dennis Balzarini, Joe Cummings, Joe Mullin

Also Present: Tom Fudala-Town Planner, Charles Rowley-Consultant Engineer

CALL TO ORDER

The Town of Mashpee Planning Board meeting was opened with a quorum in the Waquoit Meeting Room at Mashpee Town Hall by Chairman Waygan at 7:00 p.m. on Wednesday, April 17, 2013 and the Pledge of Allegiance was recited.

APPROVAL OF MINUTES—April 3, 2013 & April 6, 2013

Mr. Fudala corrected the spelling of Joe Colasuonno's name in the April 3 minutes.

MOTION: Mr. Mullin made a motion to accept the minutes with the one correction. Mr. Balzarini seconded the motion. 4 yes, 1 abstain

Chairman Waygan noted a correction in the April 6 minutes regarding the next Greenway meeting that will take place on May 1, at 6 p.m.

MOTION: Mr. Mullin made a motion to accept the minutes as amended. Mr. Balzarini seconded the motion. 4 yes, 1 abstain

PUBLIC HEARINGS

Public hearing regarding Planning Board recommendation to Town Meeting on Article 18 Medical Marijuana Treatment Center moratorium to October 21, 2013

The appointed time having arrived, Chairman Waygan opened the public hearing and read the notice, inviting public comment. Being no public comment, the Chair opened comment for members of the Board. Mr. Mullin stated that he was opposed to Article 18 because the Planning Board extended the moratorium for two years. Mr. Mullin expressed frustration with the Town Manager's efforts to change the moratorium to October 2013 and indicated that he was exploring filing a complaint with the State's Ethics Commission. Mr. Mullin added that he opposed the change on public safety grounds. Mr. Petersen inquired why the prescribed, controlled substance was not being handled by a pharmacy and stated his disagreement with the law. Chairman Waygan stated that, because it was not controlled federally, it could not be distributed from a pharmacy, and that it was a conflict between the state and federal governments. Mr. Mullin referenced a recent article regarding abuses and a criminal case in Los Angeles County. Mr. Fudala indicated that the statute limits the number of centers in the state, requiring extreme security measures. Mr. Fudala confirmed that pharmacies would not carry a drug that was banned by the federal government. Mr. Fudala stated that it was the law and voters supported it. There was further discussion regarding strictness of regulations. Chairman Waygan stated that the Board of Selectmen voted to change the date of the moratorium.

MOTION: Mr. Mullin made a motion to close the public hearing regarding Article 18. Mr. Balzarini seconded the motion. All voted unanimously.

MOTION: Mr. Balzarini made a motion to Article 18 to Town Meeting. Mr. Kooharian seconded the motion. 3 yes, 1 no, 1 abstain

7:20 Applicant: Southworth Mashpee Properties, LLC

Location: Simons Road / Fin' Me Oot / Willowbend Drive

Request: Approval of definitive subdivision plan modification (Continued from 4/3/13)

The appointed time having arrived, the Chair opened the public hearing and read for the record the public hearing notice. Mr. Rowley indicated that he received the plan this evening, noting that although he was familiar with the plan, he had not yet reviewed it in detail. Mr. Fudala noted that normally drainage and road construction plans would be included, but it would be considered during the Special Permit hearing.

Jack McElhinny, attorney for Willowbend Country Club, Tim Sullivan, Director of Construction, Kevin Klein, Norfolk Ram and Shane Brenner, Baxter & Nye, were present to discuss the Southworth Definitive Subdivision Plan Modification. Mr. McElhinny stated that they were seeking a modification for the May 2009 approved Modification #26 for "The Village at Willowbend" consisting of 40 condominium units located along the realigned Simons Road and Fin' Me Oot Road. Mr. McElhinny referenced two primary changes to the plan, since 2009, to include the realignment of Simons Road, an unimproved ancient way with public access. Southworth wishes to relocate the condominiums closer to the golf course and further away from the abutting Cranberry Ridge neighborhood, by approximately 30 feet, with the access road located behind the units. Cranberry Ridge abutters expressed support for the changes at a previous meeting between the two parties. Additionally, a larger dedicated open space would be available for Natural Heritage. The other significant change was that, although the number of units would remain 40, the number of buildings had increased from 11 to 12, due to the elimination of a 3-story, 6-unit building. The 6-unit building was being replaced by a 4-unit, 2-story building and a 2-unit, 2-story building. All units would be connected to the existing sewer treatment plant and public water. Each unit would offer one garage space and one dedicated outdoor parking space. Landscaping plans would remain the same. Natural Heritage had requested that the fence be pulled further into the property. Mr. Balzarini inquired whether the trees would still be planted along the neighboring property line and Mr. McElhinny confirmed that they would, but it was also stated that landscaping would be discussed during the following public hearing. Mr. Rowley inquired whether the plan discontinued a portion of Simons Road and eliminated Fin' Me Oot Road as a laid out subdivision street and Mr. McElhinny confirmed that Fin' Me Oot would be eliminated and Simons Road would be realigned. Mr. Rowley referenced the certification on the plan and inquired about the necessary covenant. There was discussion regarding the covenant's relation to the subdivision and Mr. Rowley suggested that the covenant may be unnecessary. Mr. McElhinny will look into the issue further. The public hearing was suspended at 7:20 p.m. by the Chair to open the next public hearing.

The Board returned to the 7:20 public hearing. Mr. Fudala pointed out that Parcel A showed no boundary on one side. Shane Brenner, Baxter & Nye, stated that the intent of the plan was to eliminate Fin' Me Oot and to divide two additional lots, the real estate building and Parcel A, which would be combined with the golf course. Mr. Brenner proposed a note on the plan stating that Parcel A would be combined with the remaining land of, known as G12. Mr. Rowley suggested that a solid line be used to denote the westerly boundary, along with the note that it was to be combined with G12. Mr. Brenner indicated that he had a plan depicting a solid line. Mr. McElhinny confirmed that the boundary would be addressed at the same time as the covenant.

MOTION: Mr. Balzarini made a motion to continue the public hearing to May 1 for Willowbend at 7:30 p.m. Mr. Petersen seconded the motion. All voted unanimously.

Mr. Fudala indicated that he would schedule the special permit and subdivision together for the next agenda and the Chair approved.

7:30 Applicant: Southworth Mashpee Properties, LLC

Location: Simons Road / Fin' Me Oot / Willowbend Drive

Request: Approval of Special Permit Modification of site plan for 40 condominium units (Continued from 4/3/13)

The appointed time having arrived, Chairman Waygan opened the public hearing. The hearing was immediately suspended in order to return to the 7:20 public hearing.

The public hearing was reopened and the Chair read for the record the public hearing notice. Mr. McElhinny stated that the second part of Willowbend's request regarding Special Permit Modification #26 and plans to incorporate the new site plan realigning Simon's Road and adjusting some unit locations. Chairman Waygan inquired about the history of the volume of units. Mr. McElhinny stated that an initial hearing process started with 60 units, but following discussions, the number had been reduced from 48 to 40. Mr. McElhinny stated that the units had been flipped so that the road would run behind the buildings with the development shifting closer to the golf course by

30 feet. Mr. McElhinny compared the existing and proposed plans. Mr. McElhinny stated that the fence would be set back 40 feet from the property line, away from abutters. Regarding the new landscape plan, Mr. McElhinny confirmed that all commitments made to the neighbors would be respected. The Chair noted that in 1985, the permit allowed for 341 units and the current permit allowed for 255 units. Mr. McElhinny stated that the only additional units were 5 units approved, but not yet built, near Orchard Road.

Mr. Balzarini inquired about the water situation. Kevin Klein, Norfolk Ram, indicated that all permits were up to date. Mr. Klein stated that Willowbend's water irrigation was governed by the state Water Management Act who limited them to 65.88 million gallons per year or 420,000 gallons per day from the irrigation well. Mr. Klein confirmed that the permit included provisions for drought conditions. Willowbend was also regulated by the Cape Cod Commission with more stringent water use allowing a 5-year rolling average, not to exceed 52.8 million gallons per year. Mr. Klein reported that Willowbend had developed a number of methods to conserve water such as low flow sprinkler heads, programmable water sprinklers based on moisture in the ground, lined irrigation ponds, new operation & maintenance practices and more natural fairways. Mr. Klein shared the 2008 Horsley Witten plan showing the irrigation well and irrigation ponds and described the transfer of water. Mr. Klein stated that the irrigation lakes were metered, and were the source of the 65.99 million gallons of water per year pumped to the golf course. Mr. Klein added that some of the water was diverted to the cranberry bogs and some of the water was returned from the irrigation lakes and back to the pond totaling 11 million gallons in 2011 and approximately 20 million gallons in 2012. It was noted that the well was restricted to using no more than 424,000 gallons per day and the two storage ponds could not exceed 65.88 million gallons per year. Mr. Klein indicated that Willowbend had historically not reached the limits and shared figures from 1994-2012. Mr. Klein stated that, despite expansion, Willowbend had decreased water use and water being removed from the well. From 1994-2005, Willowbend averaged 20.5 million gallons per year from the well and from 2007-2012, usage had been reduced to 9.1 million gallons per year. Mr. Klein noted that the EPA would be granting a 20 year permit.

Mr. Balzarini inquired whether Simons Road would continue to serve as a public right of way and Mr. McElhinny confirmed that it would. Mr. Fudala stated that there was no sign, but Mr. McElhinny responded that a sign would be installed but they were awaiting acceptance from the Board of Selectmen and Town Meeting. Mr. McElhinny stated that they had presented their request to the Board of Selectmen and would return on April 22.

Mr. Petersen inquired about best management practices related to underground drainage. Mr. Brenner stated that the proposal included low impact drainage with some bio-retention areas, drains going to leaching areas and sub-surface areas. It was noted that drainage could be found in the plan on C-4 and C-4.1. Mr. Brenner noted the intent to re-use existing structures and referenced Mr. Rowley's concerns addressed in his letter and their efforts to work with Mr. Rowley to reconcile the issues. Mr. Brenner stated that the site was flat and the intent was to use sheet flow across the roadways to make use of stormwater facilities. Mr. Petersen inquired whether there would be no change to groundwater levels since the water would be reintroduced. Mr. Brenner recommended that Matt Eddy follow up with Mr. Rowley regarding changes to the groundwater levels. Mr. Rowley responded that no water would be taken out of the ground to make the drainage systems function and that the water would be maintained in the same area. However, Mr. Rowley expressed concern regarding the extent of the existing facilities and the location of the groundwater. Mr. Rowley suggested that the water would move rapidly due to roadways, with some pervious areas that would slow down the flow. Mr. Rowley had recommended that the impervious areas be assessed to ensure that the stormwater management was able to effectively handle the quickly moving flow. Mr. Rowley also recommended that the sizing be carefully considered to address 100 year storm. There was discussion regarding stormwater structures being inspected prior to paving. Mr. Rowley emphasized that the existing stormwater structures should be inspected prior to the construction stage. Mr. McElhinny stated that they would develop a proposal to do so. Mr. Fudala inquired about use of the cultec recharge on C-4 and Mr. Brenner responded that the smaller facilities were for rooftop runoff. Mr. Fudala suggested use of sheetfall as required by Mashpee's bylaws. Mr. Brenner suggested that there was sound justification to use the cultec recharge and suggested it could increase the overall runoff for the site, increasing the actual drainage areas, causing the need for more detrimental open basins. The Chair asked for further justification and research on the issue. Mr. Brenner recommended that Mr. Eddy work with Mr. Rowley. Mr. Rowley highlighted some of the aspects of the stormwater plan and recommended a closer look at CB-7.

Chairman Waygan opened for comment from the public. Richard Aliberti, abutter to the property, expressed his concerns about water usage at Willowbend and shared with the Board and the public, several documents previously provided to Board members regarding Willowbend's impacts to the Santuit River and posed questions related to water usage. Mr. Aliberti questioned a discrepancy in reported measurements of the well's location from the Santuit River and referenced the 1995 Horsley Witten report that indicated that golf course irrigation had an impact on the River's flow and that the well drew 18%-20% from the River. Mr. Aliberti expressed concern about the

withdrawal of water from the cranberry bogs as well as ponds being added to Willowbend and referenced letters sent to Willowbend requesting more information and reports stating that over 50-70 millions of gallons of water per year were identified as supplementary. Mr. Aliberti referenced the River Protection Act and Willowbend's violation of the Act. Beverly Kane, representing the Mashpee Environmental Coalition, stated that Mr. Aliberti had addressed their Board with his concerns, asking for support to have his questions answered. Ms. Kane emphasized the importance of the Planning Board ensuring that the developer sufficiently answers questions posed by citizens. Ms. Kane also emphasized the importance of ensuring that stormwater runoff was treated before entering the groundwater using current best management practices. Mr. Balzarini requested that Mr. Klein address Mr. Aliberti's concerns. Regarding the location of the well from the Santuit River, Mr. Klein stated that it was located 434 feet from the River, as noted in the 1995 Horsley Witten report and that pumping the well did not remove water directly from the River, but that it captured the ground water that could recharge to the River. The report also stated that if the well were pumped at 430,000 gallons per day, every day, it would represent 18%-25% of the river volume at low flow periods, but Willowbend did not pump that amount every day. Additionally, the report stated on page 18 that, in 1995 when Willowbend was pumping 29 million gallons from the well, 430,000 gallons per day would translate into .16 inches and .32 inches decrease in the water level at the two sites at the low flow period. Mr. Aliberti questioned the cranberry bog usage of water and Mr. McElhinny responded that Willowbend owned the bogs, leasing them to Quaker Run Cranberries who operated the bogs with their own Water Management Act status. Mr. McElhinny stated that Willowbend made substantial efforts and invested approximately \$1 million to limit water use, for 27 holes to a figure less than when the course had 18 holes, as required by the Cape Cod Commission. Mr. McElhinny stated that Willowbend was in compliance and took the issue seriously.

Chairman Waygan suggested that the hearing would likely be continued. Mr. Fudala stated that the cranberry bogs remained the same size since 1951. Mr. Fudala inquired about the source of irrigation for the landscaping. Mr. McElhinny responded that the area, of approximately 2 acres, would be irrigated from a series of small wells located approximately ½ mile from the River. Mr. Fudala requested that the location of the wells be located on the plan. In referenced to the drawdown of the River or well, Mr. Rowley pointed out that Willowbend could not pump 430,000 gallons per day from the well since they were not permitted to exceed 52 million gallons per year. Mr. Rowley's letter recommended a continuance of the public hearing for further evaluation and discussion.

MOTION: Mr. Balzarini made a motion to continue the public hearing to May 1 at 7:30 to be combined with the other public hearing associated with Willowbend. Mr. Mullin seconded the motion. All voted unanimously.

A recess was taken at 8:55 p.m. The meeting reconvened at 9:05 p.m.

SPECIAL PERMIT

Applicant: Mashpee Industrial Realty, LLC

Location: 168 Industrial Drive, Assessors' Map 88, Parcel 35

Request: Signature of Special Permit Modification decision approved on 3-6-13

Members of the Planning Board signed the decision.

Applicant: Southport on Cape Cod Condominium Association, Inc.

Location: Southport retirement condos

Request: Modification of special permit site plans regarding community center parking lot expansion

Mr. Rowley reported that he was in contact with Mr. Bonvie and recommended that the request not be added to the agenda until Southport was ready as they were continuing to make changes to the plans.

Applicant: Mashpee Commons, LLC

Location: Mashpee Commons North Market Street neighborhood

Request: Modification of special permit to allow veterinary establishment

Mr. Fudala stated that veterinary use was not currently one of the allowable uses and would require a public hearing. Mr. Fudala has confirmed that it would not require Cape Cod Commission review.

MOTION: Mr. Balzarini made a motion to schedule a public hearing for May 15 at 7:10. Mr. Mullin seconded the motion. All voted unanimously.

TOWN MEETING ARTICLE

-Review of Article 19 Regarding discontinuance and relocation of public rights in a portion of Simons Road-The matter was discussed earlier. Chairman Waygan stated that the issue would be discussed by the Board

of Selectman on Monday and the Town Meeting would take place on May 6. Mr. Fudala stated that the plan would need to be amended on the floor to reflect a revision date of April 16.

MOTION: Mr. Balzarini made a motion to recommend the realignment of Simons Road with the revision date of April 16th. Mr. Mullin seconded the motion. All voted unanimously.

BOARD ITEMS

Old Business

Discussion of Greenways Proposal and Surrounding Commercial Property-Chairman Waygan announced the next Greenways meeting that will take place at 6 p.m. on May 1, just prior to the regular Planning Board meeting. The Chair referenced the April 6 Greenways meeting. Mr. Balzarini indicated that Mr. Fudala conducted an excellent walk of the trail. The Chair has recommended formation of "Friends of the Greenway" in order to assist with the planning for the project. Mr. Balzarini also thanked Mr. Kooharian and the Chair for their work on the Greenways project.

MMR Military Civilian Community Council/MMR Joint Land Use Study (JLUS)-

Mr. Kooharian indicated that there would be an upcoming meeting and there was discussion regarding identifying an alternate to attend the meeting. Mr. Fudala indicated that there was an upcoming round table meeting planned and Mr. Kooharian stated that he would inform the Board of the date of the meeting.

Design Review Committee-Mr. Cummings reported that Design Review approved the 40 Willowbend townhouses, pending variance approval from the Selectmen, Fire Department approval and Planning Board recommendation. Mr. Fudala stated that there was question regarding whether the variance was still in effect and the Permanent Extension Act.

Community Preservation Committee-Chairman Waygan reported that there would be items on the Town Meeting Warrant.

Environmental Oversight Committee-Mr. Petersen announced that due to a conflict of interest, he would not participate in any discussion regarding Entergy. Mr. Petersen further stated that any opinion he may have expressed about Entergy was his opinion, and not the views of the Environmental Oversight Committee or trying to advance a position by the company for which he works.

Historic District Commission-Mr. Fudala announced that a Tribal Council member may be joining the committee.

ADJOURNMENT

MOTION: Mr. Balzarini made a motion to adjourn. Mr. Petersen seconded the motion. All voted unanimously. The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Jennifer M. Clifford
Board Secretary

LIST OF DOCUMENTS

- Design Review/Plan Review Meeting Minutes
- Article 18, May 2013 Annual Town Meeting
- The Village at Willowbend, Site Construction Plans
- Planning Board Decision, Willowbend Special Permit Modification #26
- Charles Rowley Letter Regarding Plan Review for the Village at Willowbend
- Kevin Klein Irrigation Water Use Memo
- MA DEP Registered & Permitted Withdrawals 2011
- Implementation of an Act for the Humanitarian Medical Use of Marijuana